

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Definition of the Rural Service Areas of)	CC Docket No. 96-45
Two Rural Telephone Companies in the State)	
of Colorado; CenturyTel of Eagle, Inc.)	
Application for Review)	
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REPLY COMMENTS OF CENTURYTEL OF EAGLE, INC.

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CenturyTel of Eagle, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Reply Comments in response to the Public Notice issued in the above-captioned proceeding¹ and the Comments filed pursuant thereto.

I. SUMMARY

The Colorado Public Utilities Commission ("COPUC") has recently adopted a policy to redefine the service areas of all rural incumbent carriers in Colorado that have disaggregated the targeting of their universal service support. As part of this policy, on August 1, 2002, COPUC submitted a petition to the Commission proposing to redefine the service area of CenturyTel to the individual wire center ("COPUC Petition"). Pursuant to this service area redefinition, a competitive eligible telecommunications carrier ("CETC") would no longer have to serve the entire CenturyTel study area, but could qualify for universal service funding by serving any one of the CenturyTel's 56 wire centers in that study area. Despite strong opposition

¹ Public Notice, *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, DA 03-26, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Jan 7, 2003).

of three parties, including CenturyTel, the Commission allowed the COPUC Petition to become automatically “deemed approved” without any Commission action.

The Commission has a statutory duty to weigh the public interest consequences of the COPUC Petition, and to seek and consider recommendations of the Federal-State Joint Board (“Joint Board”) before disposing of such a petition. The COPUC Petition effected what was tantamount to an automatic redefinition of CenturyTel’s study area, which is contrary to the Communications Act, as amended (the “Act”). Further, continued effectiveness of the COPUC Petition will likely harm rural consumers in Colorado. The record in this proceeding demonstrates that allowing grant of the COPUC Petition to remain in effect will not bring about the petition’s stated goal of increasing competition. To the contrary, service area redefinition will serve mostly to direct high-cost support to wireless carriers that are already competing against CenturyTel.

CETCs should be required to shoulder the obligation to serve the incumbent carrier’s entire rural study area if they are going to receive federal universal service funds. Removing this obligation will remove incentives to serve the most rural customers in a study area, and will virtually guarantee that competition will reach only the lowest-cost, most profitable wire centers. Grant of the COPUC Petition and similar petitions to facilitate multiple CETCs in rural study areas have questionable public interest benefit and serve only to line the pockets of wireless carriers, while causing the universal service fund to grow at an alarming and unsustainable pace. COPUC has already submitted two petitions to this Commission for rural carrier service area redefinition (for CenturyTel and Delta County Tele-Comm, Inc. (“Delta County”)) and it is anticipated that several more are to come. This trend is of national

importance and the public interest demands that the Commission critically review any petition that lowers the bar for receipt of federal universal service funding.

CenturyTel respectfully requests that the Commission decline to adopt the COPUC Petition on reconsideration and order that the definition of CenturyTel's service area will remain the same as its study area. In the alternative, CenturyTel requests that the Commission suspend the effectiveness of the COPUC Petition until the Joint Board issues a decision on the issues involved in this proceeding, and that the Commission issue a written order once it is able to consider the Joint Board's recommendations.

II. BACKGROUND

CenturyTel, a rural carrier, serves a study area made up of 53 wire centers that are highly dispersed throughout the rural areas in the state of Colorado. CenturyTel is the carrier of last resort for all residents in its study area. It provides local exchange and exchange access service, as well as dial-up Internet access, DSL and other broadband services, long-distance and information services.

As set forth in its Application for Review,² on May 15, 2002, CenturyTel filed a Disaggregation Plan³ with COPUC under which it elected to disaggregate and target universal service pursuant to Path 3 as set forth in the Commission's rules.⁴ Pursuant to its Disaggregation Plan, CenturyTel placed each of its 53 wire centers⁵ into one of two support zones, with its seven lowest-cost wire centers (33,729 lines) in Zone 1 and the remaining 46 wire centers (52,228

² CenturyTel of Eagle, Inc., Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. (filed Dec. 17, 2002) ("Application for Review").

³ CenturyTel of Eagle, Inc. Study Area Code No. 462185 at ¶ 4 (filed May 15, 2002).

⁴ 47 C.F.R. § 315(d).

⁵ Although CenturyTel's Disaggregation Plan states that it has 53 wire centers, wire center in this context is synonymous with exchange area.

lines) in Zone 2.⁶ CenturyTel's wire centers are particularly rural and sparsely populated. The number of access lines per wire center ranges from 96 to 8,679. A map depicting the CenturyTel study area and Disaggregation Plan is attached hereto as **Exhibit A**. The Disaggregation Plan became effective upon filing without objection from COPUC or any other party.

COPUC promulgated rules, effective June 30, 2002, that provide, in part, that COPUC, "will use the disaggregation plans of each incumbent Eligible Telecommunications Carrier . . . for disaggregation of the study area of the rural incumbent local exchange carrier . . . into smaller discrete service areas [as provided in the FCC's rules]."⁷ Citing its new Rule 11, on August 1, 2002, COPUC submitted to this Commission the COPUC Petition, which sought to redefine CenturyTel's study area "into smaller discrete study areas."⁸ However, instead of following CenturyTel's two-zone Disaggregation Plan, COPUC petitioned to designate each of CenturyTel's 53 wire centers into 53 separate service areas.⁹ Thus, pursuant to the COPUC Petition, a CETC would no longer be obligated to serve the entirety of CenturyTel's study area, but could gain CETC status and the accompanying universal service funding by serving any one of CenturyTel's 53 wire centers. No change was proposed for CenturyTel's own service obligations – it remains the carrier of last resort for its entire study area.

⁶ Disaggregation Plan ¶¶ 10, 13.

⁷ 4 CCR 723-42-11 ("Rule 11").

⁸ Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company (filed Aug. 1, 2002) ("COPUC Petition").

⁹ *Id.* N.E. Colorado Cellular ("NECC") incorrectly claims that CenturyTel should not be permitted to challenge the COPUC Petition because the issues presented therein were already considered at the state level, when COPUC adopted its rule to use an incumbent ETC's disaggregation plan to redefine the incumbent's service area. Opposition of NECC at 4-6. Even understanding that this rule was pending, CenturyTel did not know that COPUC would take CenturyTel's two-zone Disaggregation Plan and propose 56 separate service areas. Thus, through the COPUC Petition, COPUC has sought a course of action at this Commission that, to a far greater extent than the plain language of Rule 11 would indicate, will likely cause significant harm to CenturyTel and rural consumers, if allowed to remain effective.

The Commission's rules require that it issue a Public Notice of any petition to redefine the service area of a rural telephone company within 14 days of its receipt of such petition.¹⁰ The Commission failed to comply with that requirement, but issued a Public Notice on August 26, 2002 seeking comment on the COPUC Petition. The Commission's rules provide that the Commission may "initiate a proceeding" to consider a state petition for service area redefinition within 90 days of the release date of the Public Notice.¹¹ If the Commission does not act on the petition within 90 days of the Public Notice release date, the study area definition proposed by the state is "deemed approved by the Commission and shall take effect in accordance with state procedures."¹² Despite opposition from CenturyTel¹³ and two other parties,¹⁴ the Commission did not initiate a proceeding or deny the petition within 90 days of the release of the Public Notice. In fact, the Commission did nothing. Therefore, COPUC's proposed redefinition of CenturyTel's service area was "deemed approved by the Commission" on November 25, 2002.

On December 17, 2002, CenturyTel filed an Application for Review of the Commission's "approval" of the COPUC Petition and, on December 30, 2002, submitted an *ex parte* letter to the Commission, again, requesting that the Commission suspend the effectiveness

¹⁰ 47 C.F.R. § 54.207(c)(2).

¹¹ *Id.* § 54.207(c)(3).

¹² *Id.* § 54.207(c)(3)(ii).

¹³ CenturyTel Comments filed in CC Docket No. 96-45 on Sept. 13, 2002.

¹⁴ See ITTA Reply Comments filed in CC Docket No. 96-45 on Sept. 27, 2002 (opposing COPUC Petition); NRTA, OPASTCO, Western Alliance and CTA Reply Comments filed in CC Docket No. 96-45 on Sept. 27, 2002 (opposing COPUC). COPUC and NECC filed reply comments in support of the COPUC petition. Two commenters supported the COPUC Petition. See Colorado Public Utilities Commission Reply Comments filed in CC Docket No. 96-45 on Sept. 27, 2002 (supporting COPUC Petition); N.E. Colorado Cellular, Inc. Reply Comments filed in CC Docket No. 96-45 on Sept. 27, 2002 (supporting COPUC Petition).

of the redefinition of CenturyTel's service area.¹⁵ The Commission initiated the current proceeding on January 7, 2003, pursuant to which the Commission will also consider a similar COPUC petition to redefine the rural service area served by Delta County. In these Reply Comments, CenturyTel incorporates the assertions and arguments set forth in its Application for Review and *ex parte* filings in this docket, and submits the following further comments.

III. THE COMMUNICATIONS ACT REQUIRES THE COMMISSION TO TAKE AN ACTIVE ROLE IN DETERMINING WHETHER TO CHANGE THE SERVICE AREA OF A RURAL CARRIER

CenturyTel respectfully submits that by allowing the COPUC Petition to become "deemed approved" without issuing an order, despite intense opposition, the Commission fell short of fulfilling its duties under Section 214(e)(5) of the Act. The Act establishes the presumption that CETCs will not be certified in rural areas to serve an area different from the ILEC's study area, and thus requires both state and federal regulators to make the case for overcoming this presumption. Where, as here, there are several factors weighing against service area redefinition, the Commission should, at a minimum, explain the basis of its decision to reverse the norm under the statute. For areas served by a rural telephone company, Section 214(e)(5) of the Act¹⁶ provides that a rural carrier's "service area" for federal support purposes¹⁷ "means *such company's* 'study area' unless and until the Commission and the States, after taking into account the recommendations of the Federal-State Joint Board . . . , *establish* a different

¹⁵ Letter from Karen Brinkmann, Counsel for CenturyTel, to Marlene H. Dortch, FCC, filed Dec. 30, 2002.

¹⁶ 47 U.S.C. § 151 *et seq.*

¹⁷ Section 54.207(a) of the FCC's rules defines "service area" as the geographic area "for which the carrier shall receive support from federal universal service support mechanisms." 47 C.F.R. § 54.207(a).

definition of service area for *such company*.”¹⁸ This language provides a presumption of the definition of a service area for a particular company and requires active participation by the state and the Commission to change that definition for such company.

A. The Commission Should Not Have Allowed COPUC to Reverse the Statutory Presumption of Study Area Definition Without Explanation

As CenturyTel explained in its Application for Review, Section 214(e)(5) of the Act requires the Commission to justify its support for a petition for service area redefinition. However, the Commission’s rules, as applied, appear to have allowed COPUC unilaterally to redefine CenturyTel’s service area without Commission action. The Commission’s inaction in this case clearly contradicts the Commission’s earlier conclusion that a study area should not automatically be disaggregated when support is disaggregated, because such automatic redefinition of study area would be contrary to Section 214(e) of the Act.¹⁹ The serious public interest consequences raised by such petitions to lower the bar for obtaining federal support (discussed further below) require an especially critical review. CenturyTel believes grant of the COPUC Petition overturned an important presumption of the Act,²⁰ yet the Commission’s inaction on the petition leaves CenturyTel without any meaningful opportunity for review.²¹

¹⁸ 47 U.S.C. § 214(e)(5) [emphasis added].

¹⁹ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association, Order on Reconsideration*, 17 FCC Rcd 11472, ¶17 (2002). (“MAG Order”); see also Comments of National Telecommunications Cooperative Association at 4 (citing to Commission rejection of automatic disaggregation for purposes of ETC designation when an a rural incumbent carrier disaggregates for purposes of targeting support).

²⁰ See Application for Review at 4.

²¹ Western Wireless posits that it is “deeply hypocritical” for CenturyTel to self-certify under Path 3, an “automatic” process, yet criticize automatic grant of the COPUC Petition. CenturyTel asserts that (1) a company disaggregating its support and (2) the state imposing a new study area definition on the carrier are not comparable processes. Among other things, if a state does not find a Path 3

The Commission has provided no indication that it has consulted with the Joint Board in allowing the COPUC proposal to become effective.²² In fact, just seven days prior to the COPUC Petition's deemed-approved date, the Commission sought Joint Board consideration on many of the exact issues raised by the COPUC Petition.²³ In response to the Commission's request, on February 7, 2003, the Joint Board issued a Public Notice seeking comment on these issues.²⁴ For example, the Joint Board has ask for comment on "what weight should states place on the presence of [disaggregation] zones when determining whether the designation of a competitive ETC below the study area level is in the public interest."²⁵ Perhaps even more fundamentally, the Joint Board seeks comment on whether "providing universal service support for multiple ETCs in high-cost areas result[s] in inefficient competition and impose greater costs on the universal service fund."²⁶

disaggregation plan acceptable, it may *on its own motion* require modification of the carrier's disaggregation plan. 47 C.F.R. § 54.315(d)(5). In contrast, if CenturyTel's service area is automatically redefined 90 days after a state files with the Commission, CenturyTel does not have the ability to require further modification.

²² Western Wireless attempts to mislead the Commission when it states that the Fifth Circuit "flatly rejected" state commission challenges to 47 C.F.R. § 54.207 of the Commission rules, and that "the rural ILECs are precluded from challenging the rule, under the doctrine of 'issue preclusion.'" Comments of Western Wireless at 7 (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"). In order to show issue preclusion, Western Wireless must *at least* demonstrate that the relevant issue was actually decided by the Fifth Circuit. See, e.g., 18 James Wm. Moore et al., *Moore's Federal Practice* ¶ 132.03[3][a]. Instead, Western Wireless buries in a footnote that the Fifth Circuit *never even reached the merits of issue*, instead finding that the states lacked standing to raise the issue because they could not show that they were harmed by the rule. *TOPUC*, 183 F.3d at 419. Clearly, issue preclusion does not apply to an issue that was never reached by the court.

²³ *Federal-State Board on Universal Service*, 17 FCC Rcd 22642 (2002).

²⁴ Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("Joint Board Public Notice").

²⁵ Joint Board Public Notice at ¶ 35.

²⁶ *Id.* ¶ 16.

As stated, the Act presumes that CenturyTel's service area is the same as its study area and requires careful consideration, including consideration of the Joint Board's recommendation prior to reversing that presumption. In contrast, the Act does not require a Joint Board recommendation in the event the Commission *declines* to redefine the CenturyTel's service area. Therefore, CenturyTel urges the Commission to immediately reverse its grant of the COPUC Petition on reconsideration or suspend its operation until the Commission is able to issue an order "taking into account the recommendations of the Joint Board."

B. The FCC Should Not Permit COPUC to Make a "Blanket" Redefinition of the Study Area – the Statute Requires a Company-Specific Determination

As explained by the United States Telecom Association ("USTA") in its Comments, the Act requires that the "Joint Board must make a recommendation specifically with regard to a *particular company* as a basis for consideration by the Commission and the states regarding a change in the definition of service area for a rural carrier."²⁷ COPUC, however, has determined to forgo any individualized analysis for service area redefinition. Specifically, COPUC has committed to "undertake to disaggregate [all] rural study areas as soon as practically possible."²⁸ COPUC has also has rejected CTA's suggestion that redefinition of all rural carriers' service areas be anything other than automatic, stating, "[o]nce support has been disaggregated, it would be anti-competitive to defer the redefinition of service areas to a new . . . adjudicative proceeding."²⁹ In addition to the COPUC petitions to redefine the service areas of

²⁷ Comments of the United States Telecom Association at 4 [emphasis added].

²⁸ *Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Provider*, Decision on Exceptions, Decision No. CO1-476, at 23, 27 (adopted Mar. 14, 2001) (this finding was opposed by the Colorado Telecommunications Association ("CTA"), which represented CenturyTel's interest in the proceeding).

²⁹ *Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism*, 4 CCR 723-41, and *the Rules Concerning Eligible Telecommunications Carriers*, 4 CCR 723-42, Ruling on Exceptions and Order Vacating Stay, Decision No. 01R-434T (adopted Mar. 18, 2002).

CenturyTel and Delta County, CenturyTel understands that COPUC is in the process of redefining service areas of at least five other rural telephone companies in the state.³⁰ If COPUC continues with its blanket redefinition approval policy, COPUC will submit a petition to this Commission for each of these companies. USTA observes that “[s]tate rules such as [COPUC’s] Rule 11 underscore the importance and necessity of the Commission’s consideration of a Joint Board recommendation with regard to any change in definition of a rural telephone company’s service area to something other than its study area.”³¹

The COPUC Petition for redefinition of CenturyTel’s study area is a prime example of why it is critical for the Commission to review such proposals on a company-by-company basis. The Act recognizes that rural areas should be treated differently from non-rural areas and that it is not necessarily in the public interest for competitive carriers serving rural areas to be approved as ETCs.³² As explained by the Rural Task Force:

Congress recognized that unrestricted entry may not be beneficial to consumers in some rural ILEC areas. At the same time, Congress did not intend to deny rural consumers the benefits of competition when the state determines that competition is in the public interest. Notably, Congress did not place similar restrictions on areas served by non-Rural Carriers. This demonstrates a decision by Congress to allow policies pertaining to competitive entry and universal service reform for Rural Carriers to be appropriately different than for non-Rural Carriers.³³

COPUC’s and this Commission’s actions essentially erode the statutory distinction between rural and non-rural carriers. COPUC is attempting to impose a service area definition on CenturyTel

³⁰ CenturyTel understands that COPUC is reviewing service area redefinitions for the following rural carriers: Wiggins Telephone, Eastern Slope Rural Telephone Association, Inc., Plains Cooperative Telephone Association, Inc., Great Plains Communications, Inc., and Sunflower Telephone Co., Inc.

³¹ Comments of USTA at 5.

³² 47 U.S.C. § 214(e)(2).

³³ Rural Task Force, CC Docket No. 96-45, *Recommendation to the Federal-State Joint Board on Universal Service*, at 39 (rel. Sept. 29, 2000).

that could result in a windfall to CETCs choosing to serve only a handful of the most profitable wire centers, to the detriment of Colorado's highest-cost areas. The statute requires that the Commission and the states review such proposals on a company-specific basis.

IV. GRANT OF THE COLORADO PETITION DISSERVES THE PUBLIC INTEREST AND SETS A DANGEROUS PRECEDENT NATIONWIDE

A. Granting the COPUC Petition Will Not Increase Competition, Only Enrich Wireless ETCs

The record in this proceeding demonstrates that the COPUC Petition disserves the public interest. Proponents of COPUC's proposals for service area redefinition proffer only the vague promise that such redefinition will foster competition. CenturyTel, Delta County, and other commenters in this proceeding, however, have shown that a redefinition of service area will serve only to remove any incentive that competing carriers might otherwise have to serve all the customers in a study area, including those in the most rural, high-cost areas. As explained by Delta County:

Wireless carriers already serve the customers in their licensed areas, and thus are already competing with the incumbent ETCs in those areas. Reducing the requirement to serve the incumbent's whole study area removes even the use of resale to extend choices to more customers – thereby reducing competition compared to what §214(e) requires.³⁴

Similarly, TCA states that “rural LEC study area redefinition will not incent competitive entry in rural Colorado. It will merely enable wireless CETCs to avoid competing in areas where they would rather not compete. Regulators should not confuse an *inability* to serve with a conscience [sic] *choice not* to serve.”³⁵ Although not all of CenturyTel's study area is being served by competitive carriers, a large portion of the study area is already subject to competition. In

³⁴ Comments of Delta County at 10 [emphasis in original].

³⁵ Comments of TCA at 6 [emphasis in original].

addition to NECC and Western Wireless, San Isabel Telecom, AT&T Wireless and Verizon Wireless all compete with CenturyTel in Colorado. Thus, rather than increase effective competition, redefinition of CenturyTel's service area will allow competitive carriers -- who have not demonstrated they meet the definition of high-cost -- to draw money from the universal service fund, but excuse those carriers from meeting the minimum obligations required of a carrier of last resort in a high-cost area. This is not meaningful "competition" likely to confer any benefit on consumers; rather, it is a blatant grab for dollars by carriers that have not demonstrated they deserve funding.

Contrary to Western Wireless's claims,³⁶ the Commission's rules specifically provide that a CETC "shall be eligible to receive universal service support . . . and shall . . . [o]ffer the services that are supported by federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier's services."³⁷ In its comments, TCA shows that NECC and Western Wireless certainly have the means to offer service beyond their licensed service areas, "through roaming agreements, or possibly other measures."³⁸ As such, NECC and Western Wireless's claims that they are restricted by their cellular footprint from competing throughout CenturyTel's study area are patently false, and merely exhibit their "choice not to serve." These carriers can serve the entirety of the CenturyTel study area through a combination of their own facilities, roaming agreements, and resale, and should be required to do so if they wish to obtain CETC status and the accompanying universal service funding based on CenturyTel's cost structure.

³⁶ Comments of Western Wireless at n.3.

³⁷ 47 C.F.R. § 54.201(d).

³⁸ Comments of TCA at 8 (quoting Testimony of Staff Witness Fischhaber, Docket No. 02A-444T, in which an NECC witness confirmed that it is able to provide service beyond its licensed cellular area).

CenturyTel agrees that provision of service to the entirety of the CenturyTel study area *is* difficult.³⁹ But, CenturyTel does it every day, and so should any carrier that seeks to qualify for universal service support in this area. CenturyTel is not suggesting that customers be denied access to competitive carriers that can and do compete with CenturyTel. However, these companies should not receive universal service funding until they shoulder the same burden as the carrier of last resort for the entire study area. This requirement is not an “artificial regulatory barrier[] to competition,”⁴⁰ but a reasonable prerequisite for *all* carriers receiving universal service support in a high-cost area.

Simply stated, it is not the Commission’s charge to make it as easy as possible for competitors to tap into universal service funding, but rather to protect and preserve universal service.⁴¹ Past practices, however, show that too little attention has been paid to the preservation of the universal service fund compared to the drive to subsidize competitors. As OPASTCO recently observed:

a number of the determinations that have been made by state commissions and the FCC thus far have placed an over-emphasis on the benefits of competition and have equated the introduction of financially supported competition to the serving the public interest. These decisions have overlooked or ignored the often significant costs and detriment to rural consumers that Congress obviously recognized could result from financially supporting competition in rural areas.⁴²

³⁹ See COPUC Petition at 4 (stating that a requirement to serve all 53 CenturyTel wire centers would pose “a significant barrier to entry”).

⁴⁰ Comments of Western Wireless at 3.

⁴¹ See Comments of Delta County at 21 (quoting statements by Commissioners Powell, Martin and Adelstein).

⁴² OPASTCO, *Universal Service in Rural America: A Congressional Mandate at Risk*, at 24 (Jan. 2003) (“OPASTCO USF Report”).

The Commission must critically evaluate all petitions such as those at issue in this proceeding, as failing to do so could jeopardize the high-cost fund.

Delta County cites to a Salomon Smith Barney report that states that requests by wireless carriers for universal service funding “are often contested and that the regulatory treatment could change, in part because the analyst believes that the costs of wireless services are significantly lower than the incumbent costs that determine support levels.”⁴³ Further, as the Joint Board recognized in its February 7, 2003 Public Notice that, “[s]ome analysts indicate that universal service funding received by an ETC for providing service to its wireless residential customers is reported as an incremental revenue source and that such incremental revenue represents ‘almost all margin.’”⁴⁴ Similarly, TCA notes that, “[f]ederal support received by wireless ETCs has ballooned from \$500,000 in 1999 to a projection of \$100 million in 2003.”⁴⁵

This trend will only get worse if left unchecked:

if state and federal regulators continue their liberal granting of ETC status to wireless carriers in high-cost rural areas, this amount could grow significantly and rapidly. It is estimated that if all wireless carriers nationwide were granted ETC status that the annual funding level of the High-Cost program would grow by approximately \$2 billion.⁴⁶

In light of these growing concerns, the Commission should focus on whether grant of multiple CETC applications, especially in cases in which the CETCs are held to a lower standard than the

⁴³ Comments of Delta County at 25 (citing Salomon Smith Barney, *Wireless Services – USF Subsidies May Sig. Improve Subscriber Economics for Rural Carriers*, p. 1 (Jan. 21, 2003)).

⁴⁴ Joint Board Public Notice at n.43 (citing Salomon Smith Barney, *Western Wireless (WWCA): USF Provides Upside to Our EBITDA*, at 1 (Jan. 9, 2003)).

⁴⁵ Comments of TCA at 4 (citing 1Q:2003 USAC Projections (annualized), available at <http://www.usac.org>).

⁴⁶ OPASTCO USF Report, at 21.

incumbent ETC, will enhance universal service for the benefit of consumers, or will merely enrich wireless providers.

B. Grant of the COPUC Petition Will Greatly Exacerbate Cherry Picking

As discussed in CenturyTel's Application for Review, a policy of allowing a CETC to serve only one wire center will virtually guarantee cherry-picking in CenturyTel's exchanges.

1. CenturyTel Properly Disaggregated Support

In its Disaggregation Plan, CenturyTel analyzed the costs of each of its 53 wire centers and, pursuant to this analysis, placed its seven lowest-cost wire centers in Zone 1 and its remaining higher-cost wire centers in Zone 2.⁴⁷ Clearly, there is disagreement over the proper interpretation of the Commission's disaggregation rules. For example, NECC criticizes CenturyTel, alleging that it "cleverly sought to block competition using Path 3 self-certification,"⁴⁸ and that Path 3 disaggregation would require CenturyTel to establish *at least* 53 support zones – one for each wire center.⁴⁹ CenturyTel asserts that it had no bad intent when it sought to target its support using two zones. Prior to disaggregation, all of CenturyTel's wire centers in Colorado received the same support based on CenturyTel's average costs for the whole study area. CenturyTel's two-zone Disaggregation Plan *better* targets support to wire centers with different costs, but avoids the administrative impracticalities of 53 separate zones. It is admittedly an imperfect system. However, CenturyTel would have to disaggregate to the

⁴⁷ The facts demonstrate the error in Western Wireless's insinuation that CenturyTel's disaggregation was "not cost-based" and an "arbitrary division of its service area." *See Ex Parte Comments of Western Wireless*, CC Docket No. 96-45, Oct. 4, 2002 (attached to the Comments of Western Wireless). CenturyTel's zone determination for each wire center was clearly based on the costs of providing service to that wire center.

⁴⁸ Opposition of NECC at 6.

⁴⁹ *Id.*

individual line in order to align support perfectly with costs. Neither the Commission nor any of the commenters have suggested such an approach is required, much less practical. Rather, the Commission's rules allow CenturyTel to disaggregate "to the wire center."⁵⁰

2. Permitting CETCs to Pick and Choose Among Individual Wire Centers Disserves Universal Service and Constitutes Regulatory Arbitrage

If the Commission allows CETCs to serve only one wire center and receive support based on CenturyTel's costs, CETCs would have a strong incentive to serve only the lowest cost wire centers in a given zone and to ignore the relatively high-cost wire centers. No commenters even attempt to refute that such incentives exist. The incentives to cherry pick are especially strong in light of the decision to redefine CenturyTel's service area in a manner that does not correspond with CenturyTel's two-zone Disaggregation Plan.⁵¹

Even without the obvious (and particularly acute) cherry picking issues associated with creating 53 service areas when support is targeted to only two zones, support disaggregation does not completely mitigate the problem of cherry picking. As explained by Delta County:

Universal service support reimburses only a fraction of a company's high costs. Delta County must average its local rates pursuant to state law, and §69.3(e)(7) of the of the Commission's rules require it to offer study-area-wide averaged access rates. Thus, even when support has been aligned more closely with costs in different wire centers or zones, the incumbent carrier end user and carrier charges will not be based on deaveraged costs.⁵²

⁵⁰ 54 C.F.R. § 54.315(d).

⁵¹ Western Wireless's offer to serve both the relatively high- and low-cost areas in its licensed cellular footprint *would* somewhat mitigate cherry picking concerns, but it is not required under the COPUC's proposal. Further, Western Wireless's offer to serve only in its licensed cellular footprint falls short of a CETC's obligation to serve an entire service area if it wishes to receive federal support.

⁵² Comments of Delta County at 16 [emphasis in original].

Thus, support disaggregation does not mean that an ILEC's costs or rates have been disaggregated.⁵³ For this reason as well, allowing CETCs to pick and choose which wire centers to serve inevitably will lead to cherry picking and will remove all likelihood that competition will ever reach any but CenturyTel's lowest cost wire centers. Thus, the public interest dictates that the Commission should deny grant of the COPUC Petition as contrary to the public interest.

V. THE ISSUES RAISED IN THIS PROCEEDING ARE NOT LIMITED TO COLORADO AND AFFECT RURAL AREAS THROUGHOUT THE COUNTRY

The issues presented to the Commission in this proceeding are by no means limited to the state of Colorado. Proof of this is found in the wide-ranging inquiry into designation of ETCs now being undertaken by the Joint Board. As is highlighted by the comments in this proceeding, the FCC Commissioners also consider the issue of funding competitive carriers one of national concern.⁵⁴ As explained by Commissioner Adelstein, the problem of automatically granting support to CETCs, without properly considering the toll it may take on the universal service fund, is of national importance, and is an issue that the Commission and the states must no longer ignore:

[t]he State Commissioners play a key role in determining if a competitor is eligible for universal service support. They need to take great care in doing this – greater care, in my opinion, than some have in the recent past. This designation is critical to small

⁵³ TCA's suggestion that CETCs serve at least all contiguous wire centers in a study area should not be adopted by the Commission. Comments of TCA at 8-9. TCA proposes that CenturyTel's study area should be divided into 13 service areas, each consisting of contiguous wire centers. This improves on COPUC's 53-service-area proposal, but would still create an uneven playing field because CenturyTel must continue to serve the entire study area.

⁵⁴ See Comments of Delta County at 21-22 (quoting statements of the FCC Commissioners raising concerns about subsidizing competition through the universal service fund); Comments of NTCA at 6-7 (same).

carriers serving high-cost areas. And it's a key factor in allocating limited – and shrinking – universal service funds.⁵⁵

Chairman Powell has similarly noted that this Commission has to this point provided

“extraordinary advantages to competitive entrants.”⁵⁶

Further, COPUC's insistence that incumbent ETCs continue to serve their entire respective study areas, while CETCs may serve only one wire center in that study area, is just one example of the disparate treatment of incumbents and competitors throughout the country.

TCA explains in its comments:

State commissions rarely impose comparable quality of service requirements upon wireless ETCs, leaving consumers to fend for themselves. Several states, including Colorado and Kansas, identify equal access as a supported service and require it be provided **before** granting rural LECs access to the state high cost fund. However, both states have exempted wireless carriers from this requirement on the grounds that it is ‘too costly’ to provide.⁵⁷

In contrast, several states have begun to acknowledge problems associated with the ETC designation process. For example, last year the Utah Supreme Court upheld an order by the state's Public Service Commission denying Western Wireless rural ETC status because such designation would increase demands on the state universal service fund without any offsetting benefits.⁵⁸ The Utah Public Service Commission specifically had found that, in the absence of corresponding public benefits, increasing the burdens on the state universal service fund was not in the public interest. Similarly, the Public Utilities Commission of the State of South Dakota (“SD PUC”) originally declined to provide certification to this Commission that Western

⁵⁵ *Rural America and the Promise of Tomorrow*, Remarks of Jonathon S. Adelstein to the NTCA Annual Meeting and Expo, Feb. 3, 2003.

⁵⁶ See Comments of Delta County at 21 (quoting Speech by Michael K. Powell at the Goldman Sachs Communicopia XI Conference, Oct. 2, 2002).

⁵⁷ Comments of TCA at 5 [emphasis in original; citations omitted].

⁵⁸ *WWC Holding Co., Inc. v. Public Serv. Comm'n of Utah*, No. 20000835 (Sup. Ct. filed Mar. 5 2002).

Wireless would use federal support in a manner consistent with Section 254(e) because the carrier had failed to make certain filings.⁵⁹ Only after Western Wireless demonstrated that it complied in full with six conditions set forth by the SD PUC, did the SD PUC eventually designate Western Wireless as a CETC in certain rural service areas.⁶⁰

The process observed in a petition of the Washington Utilities and Transportation Commission (“WUTC”) for service area redefinition of its rural carriers also provides a stark contrast to COPUC’s approach to service area redefinition.⁶¹ The WUTC petition was the product of a cooperative effort, jointly filed with the concurrence of the rural incumbent LECs. The Commission noted that, “[T]he request for disaggregated study area support is inextricably intertwined with the request for agreement with the Washington Commission’s proposed designation of the individual exchanges of the fifteen rural carriers as service areas.”⁶² In considering the WUTC petition, the Commission approved the plan and issued an order to explain its decision. CenturyTel asserts that the COPUC Petition deserves similar consideration and explanation.

VI. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to immediately issue an order on reconsideration reversing the approval of the COPUC Petition because it disserves the public interest. In the alternative, the Commission should toll the effectiveness of

⁵⁹ *Request of WWC License LLC for Certification Regarding Its Use of Federal Universal Service Support*, TC02-156, Order Denying Certification (Sep. 27, 2002).

⁶⁰ *The filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Order Designating Western Wireless as an ETC for Areas Served by Certain Rural Telephone Companies, TC98-146 (Jan. 6, 2003).

⁶¹ Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support 15 FCC Rcd 9921 (Comm. Car. Bur. Sep. 9, 1999).

⁶² *Id.* ¶ 7.

its approval of the COPUC Petition until the Joint Board has made its recommendations on disaggregation of support and changes in rural study area definitions, and at that time issue a written order explaining its disposition of the COPUC Petition in light of the Joint Board's recommendations.

Respectfully submitted,

CENTURYTEL OF EAGLE, INC.

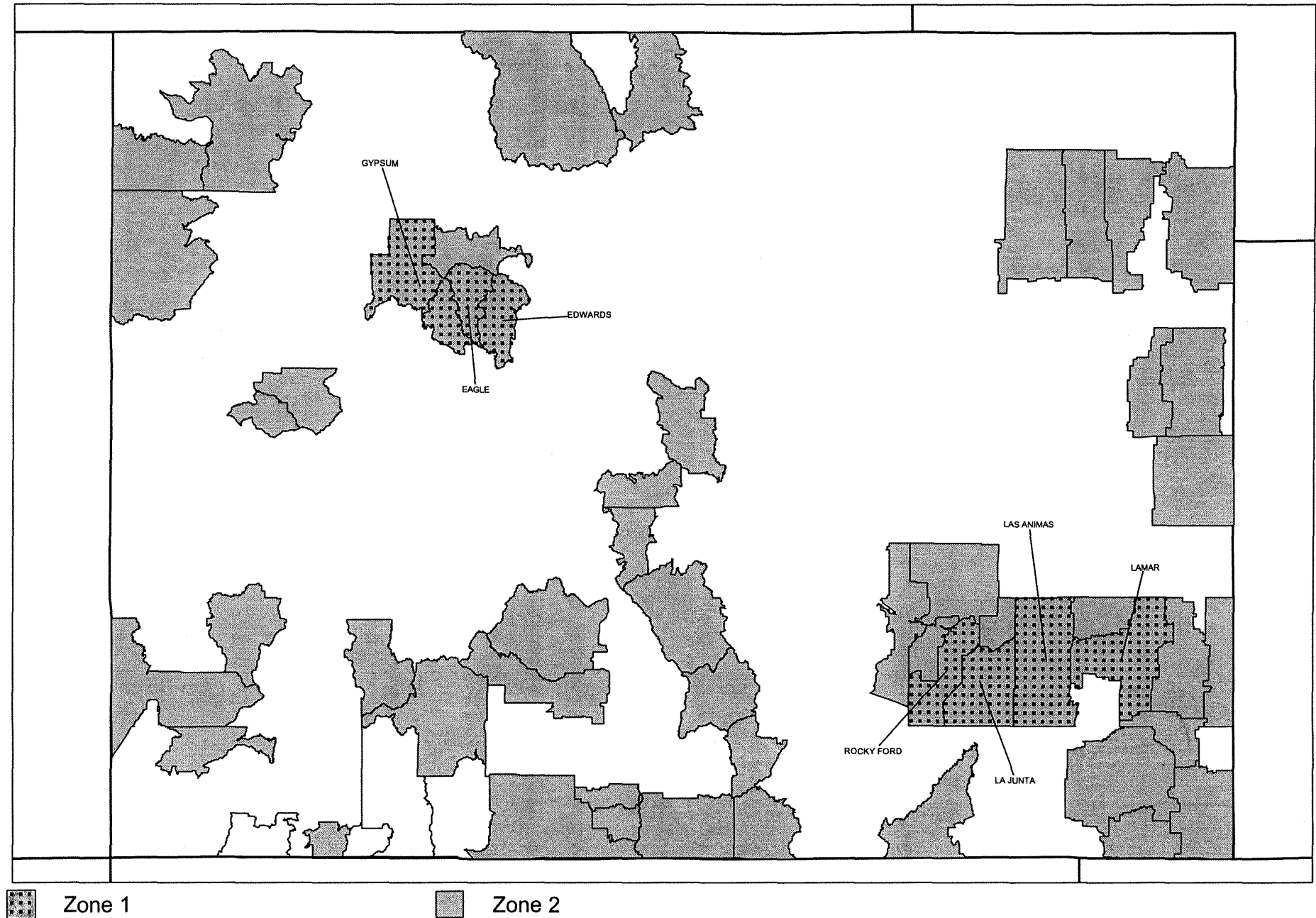
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EXHIBIT A

CenturyTel of Eagle
Study Area #: 462185



CERTIFICATE OF SERVICE

I hereby certify that a copy of the Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. was served this 21st day of February 2003, by U.S. Mail to the persons listed below.

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